

STATE OF VERMONT  
Rules Effective Date: August 15, 2003  
**RULES OF THE BOARD OF FUNERAL SERVICE**  
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## **PART 1. INTRODUCTION**

### **1.1 THE BOARD'S PURPOSE**

The Board of Funeral Service (which is referred to as "the Board" in this rule) has been created and given powers by Vermont law. Its purpose is to protect the public health, safety and welfare by setting standards, licensing only qualified applicants and regulating licensees and their practices.

### **1.2 LAWS THAT GOVERN THE BOARD**

The Board is governed by specific state laws that establish its responsibilities for setting standards, issuing licenses and regulating the profession. Those laws are found in 26 V.S.A. §§ 931-998 and 1211-1275 and in 18 V.S.A. §§ 5201-5225. In addition, the Board must comply with several other state laws such as the "Administrative Procedure Act" (3 V.S.A. §§ 801-849), the "Open Meeting Law" (1 V.S.A. §§ 310-314) and the "Right to Know Law" (1 V.S.A. §§ 315-320). These laws set forth the rights of an applicant, license holder or member of the public. The complete text of these laws is available at most libraries and town clerks' offices.

## **PART 2. DEFINITIONS**

In addition to the definitions found at 26 V.S.A. § 1211, as used in these rules:

- A. "Branch location" means a place of business conducted at a specific street address or location devoted to the practice of funeral service and which does not have a casket display room or preparation room. A business only qualifies as a branch location if it is in addition to a principal funeral establishment duly licensed in this State.
- B. "Crematory establishment" means a place of business conducted at a specific street address or location devoted to the disposition of dead human bodies by means of cremation.
- C. "Depository" means a federal or state bank, federal or state savings bank, savings and loan association, or credit union.
- D. "Embalmer" means a person engaged, or holding himself or herself out as engaged, in embalming, whether on his or her own behalf or in the employ of another, and shall include any person who shall use, in connection with his or her name, the word embalmer, or any other word or title intending to imply or designate him or her as an embalmer, or as one engaged in embalming.
- E. "Embalming" means preparing, disinfecting and preserving, either hypodermically, arterially or by any other recognized means, the body of a deceased person for burial, cremation or other final disposition.
- F. "Escrow account" means an account established for funds that have been paid to a funeral director for prepaid funerals. An escrow account must be established in a federally-insured depository institution, an insurance company licensed to do business in Vermont, or a trust company chartered by the State of Vermont.
- G. "Escrow agent" means a federally insured depository, a licensed insurance company, a licensed attorney or other person who meets Board requirements, as defined in Rule 6.3 and who approves the payment of funds out of escrow accounts.
- H. "Equivalent goods and services" means those funeral goods of equivalent value which are being substituted for goods and services originally purchased under a pre-need contract in the event that originally purchased goods and services are no longer available.
- I. "Funeral Director" means a person who is engaged in the practice of funeral services for a fee or other compensation.
- J. "Funeral Establishment" means a principal place of business in this State conducted at a specific street address or location devoted to the practice of funeral service.
- K. "Insurance contract" or "insurance policy" means an agreement entered into with a third party company duly licensed to sell insurance in the State of Vermont for the provision of funds to support the purchase of funeral services or merchandise to be provided at the time of death.
- L. "Irrevocable" means the contract is incapable of being retracted or revoked except as provided for by Rule 6.5(F).
- M. "Prepaid funeral" means the aggregate of goods and services which a person arranges to be provided at the time of death, and upon which payments have been made more than 30 days before the death. A prepaid funeral may be arranged for oneself or for another and may be held as an escrow account, or funded by an insurance policy or annuity.
- N. "Practice of funeral services" means arranging, directing, or providing for the care, preparation or disposition of dead human bodies for a fee or other compensation. See 26 V.S.A. § 1211(4) for a more detailed definition.
- O. "Removal" means the removal of dead human bodies from places of death, hospitals, institutions, or other locations,

for a fee or other compensation.

P. "Removal personnel" means those persons performing removals as defined above.

Q."Revocable" means the contract can be voided or annulled by recalling, withdrawing, or reversing.

### **PART 3. INFORMATION FOR APPLICANTS**

#### **3.1 APPLICATIONS**

Applications and information about the types of licenses and their requirements are available from the Office. An applicant shall submit a fully completed application form with all supporting documentation and the fee to the Office. The Board reviews applications only after the fully completed application and documentation is received, including evidence of any required education, supervision, employment, evidence of a license in another jurisdiction and its licensing standards, or other licensing standards.

An applicant issued an initial license within 90 days of the renewal date will not be required to renew or pay the renewal fee. The license will be issued through the next full license period. An applicant issued an initial license more than 90 days prior to the renewal expiration date will be required to renew and pay the renewal fee.

#### **3.2 EMBALMER LICENSE**

Qualifications for embalmer licensure are outlined in 26 V.S.A. § 991.

- A. Applicants for embalmer licensure by examination shall either:
  - 1. have graduated from a two-year school of funeral service  
or  
have completed one academic year or its equivalent as determined by the Board from an accredited school of funeral service and 30 credits of instruction from an accredited college or university, and
  - 2. have served a traineeship of 12 months of full-time employment or its equivalent, and
  - 3. pass the examination(s) required or approved by the Board.
- B. Applicants for embalmer licensure by endorsement shall:
  - 1. have a valid license from another state with requirements for licensure substantially equivalent to those in this state, and
  - 2. have held the license for at least three years prior to the date of application, and
  - 3. pass the examination(s) required or approved by the Board pursuant to Rule 3.4 below.

#### **3.3 FUNERAL DIRECTOR LICENSE**

Qualifications for funeral director licensure are outlined in 26 V.S.A. § 1252.

- A. Applicants for funeral director licensure by examination shall:
  - 1. have assisted with 30 funerals, under the direct supervision of a licensed funeral director. (Funeral director trainees do not need to register or report progress but the supervising funeral director shall provide verification of completion of the training at the time the applicant applies for licensure), and
  - 2. pass the examination(s) required or approved by the Board.
- B. Applicants for funeral director licensure by endorsement shall:
  - 1. have a valid license from another state with requirements for licensure substantially equivalent to those in this state, and
  - 2. have held the license for at least three years prior to the date of application, and
  - 3. pass the examination(s) required or approved by the Board pursuant to Rule 3.4 below.

#### **3.4 REMOVAL PERSONNEL REGISTRATION**

Qualifications for removal personnel are outlined in 26 V.S.A. § 1252.

- A. Applicants for removal personnel registration shall:
  - 1. show proof of employment by a licensed crematory or funeral establishment in good standing

- diseases.
2. in this state; and Have successfully completed a course of instruction of at least three clock hours in infectious diseases.
- B. The course of instruction in infectious diseases must be approved by the Board. Applicants may contact the Office for a list of approved courses.
- C. The Board may waive the course requirement if the applicant has sufficient education or experience with universal precautions and infectious diseases.

### **3.5 EXAMINATIONS**

As set forth in 26 V.S.A. § 1253, examinations are required for embalmers and funeral directors. Applicants shall furnish proof of passing an examination. The Board uses the written examinations of the Conference of Funeral Service Examining Boards (CFSEB) and may approve a subsequent or alternative licensing examination for both embalmers and funeral directors. In addition, embalmers shall take a practical exam. If any part of an exam is failed, the exam shall be completely retaken. The CFSEB exams are given in Vermont at least once a year, but they may be taken in other states if the results are reported to the Vermont Board.

All applicants for licensure, including applicants for licensure by endorsement, shall take and pass an examination on the Vermont laws and rules governing the profession in which he or she is applying for licensure. This examination must be taken in Vermont, even though other examinations such as the CFSEB may be taken elsewhere.

### **3.6 FUNERAL ESTABLISHMENT LICENSE**

Qualifications for a Funeral Establishment license are outlined in 26 V.S.A. § 1252

Applicants for a Funeral Establishment license shall:

1. present permits showing the building to be used (a) has a water supply and wastewater disposal as required by the Agency of Natural Resources and (b) has the approval of the state fire marshall, and
2. identify the funeral director to be responsible for the funeral establishment, and
3. pass an inspection of the establishment by the Board or its designee;

### **3.7 FUNERAL ESTABLISHMENT PREPARATION ROOM REQUIREMENTS**

A funeral establishment, if used for embalming or preparation for final disposition, shall have a preparation room.

- A. The preparation room shall have:
1. electrical service, an outside exhaust fan and hot and cold running water;
  2. walls, floors, ceilings, operating tables, sinks, and other furnishings that can be kept clean and sanitary, cabinets for clean and sanitary storage of instruments and a basin for disinfecting instruments after use;
  3. proper waste disposal and drainage facilities, including a covered receptacle for refuse, bandages, cotton and other waste materials which must be disposed of by burning or placing in a plastic bag according to guidelines provided by the Department of Health;
  4. windows and lockable doors that obstruct public view into the room;
  5. hydro or electric aspirators;
  6. the following items: germicidal soap; paper towels and dispenser; viscera pail; embalming table (enamel or stainless steel); sanitary removal cot; clean sheets; at least one large rubber or plastic disaster pouch; a supply of fluids, powder, disinfectants, cotton, threads, cosmetics, hair and barber needs, and plastic or rubber goods such as stockings, pants and unionalls; and an adequate stock of regularly needed instruments and embalming supplies; and
  7. eyewash station or an eyewash disposable kit conveniently located for emergency use.

In addition, the preparation room shall conform to other applicable local, state and federal requirements, including occupational safety and health regulations, Health Department rules, and public building requirements.

- B. The funeral establishment license and all personnel licenses shall be displayed together in a conspicuous public area.

### **3.8 INSPECTIONS**

The Board or the Office of Professional Regulation has the authority to inspect any funeral establishment, equipment, and records related to items 1 through 5 below, at any reasonable time, and the funeral director shall make such records available.

The Board or its designee will inspect for and verify the following:

1. the preparation room, casket display room (if the funeral establishment has a preparation or casket display room), chemical storage room or other areas used for conducting of funeral business to review for conformance to any statute or rule;
2. the motor vehicles used for removal of human remains;
3. working order of any required equipment;
4. records pertaining to prepaid funeral arrangements and forms used, regardless of the date contracts and forms were developed;
5. general price lists, casket price lists, vault lists, casket display books or catalogues, and other materials used in the sale of funeral arrangements and any information provided to consumers;

### **3.9 BRANCH LOCATIONS**

Each location of a funeral establishment is subject to Board inspection. However, a location does not require a separate license or fee if there is no casket display room or preparation room. Copies of the principal funeral establishment license and all personnel licenses shall be displayed together in a conspicuous public area. Originals shall be displayed in the principal establishment.

### **3.10 LICENSE DENIALS, HEARINGS, APPEALS**

- A. If the Board intends to deny an application for a license, the Board shall send the applicant written notice of the decision by certified mail. The notice shall include a statement of the reasons for the action and shall advise the applicant that the applicant may file a petition with the Board for review of its preliminary decision within 30 days of the date on which the notice is mailed. After the hearing, the Board shall affirm or reverse the preliminary denial, explaining the reason therefor in writing.
- B. A party aggrieved by a final decision of the Board may appeal that decision by filing a notice of appeal with the Director who shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the Board. Persons wishing to appeal shall give written notice of their decision to appeal within 30 days of receipt of the Board's final decision to: the director of the Office of Professional Regulation.  
The appellate officer's decision may be appealed to Washington Superior Court.

## **PART 4. INFORMATION FOR LICENSEES**

### **4.1 RENEWING LICENSES**

The Office has a fixed 24-month licensing schedule. Licensees renew on a fixed biennial schedule: August 1 of the odd-numbered years. A licensee shall renew by the expiration date printed on his or her license. Before the license expiration date, the Office will mail a renewal application and notice of renewal fee. A license will expire automatically if the renewal application and fee are not returned to the Office by the expiration date.

A licensee is responsible for notifying the Office promptly if he or she changes name, mailing address or business address.

### **4.2 REINSTATING LICENSES**

A license which expired because it was not renewed on time may be reinstated by submitting an application to the Board and paying a reinstatement fee and the renewal fee for the current renewal period. The Board may require additional training, continuing education hours, or examination as a condition of reinstatement.

### 4.3 CONTINUING EDUCATION

- A. All applicants for renewal or reinstatement of licenses shall successfully complete 10 hours of continuing education per license during the two year period ending on the license expiration date. Continuing education topics shall be directly related to maintaining competence in essential issues of public protection and welfare.
1. Essential issues of public protection are:
    - a. chemical handling
    - b. handling of blood-borne pathogens
    - c. state and federal statutes related to the funeral industry
    - d. management of funds
    - e. fraudulent practices
    - f. grief management and understanding multicultural beliefs about death and dying
    - g. other topics approved by the Board
- B. Individuals initially licensed for less than one year will not be required to submit evidence of continuing education until conclusion of the first full, two-year renewal period following initial licensure.
- C. Applicants for renewal of licenses shall file with their applications a signed Continuing Education Form, provided by the Office, listing continuing education programs for which they claim credit and showing the sponsoring organization, location of program, title of program and description of content, dates attended, and hours claimed.
- D. Any person or organization may seek approval of a planned course offering by petitioning the Board 90 days before the educational activity will commence. Advance approval requests shall include the name of the sponsoring organization, location of program, title of program, description of content, dates of the program, and continuing education hours requested. A resume of all instructors shall also accompany the request for approval of a continuing education program.
- E. Continuing professional education credit will be given for whole hours only, with a minimum of fifty minutes constituting one hour. Contact hours may not include travel time, lunch or breaks.
- F. Credit may be granted for time spent in activities as an instructor, presenter, or supervisor, for up to one-half of the hours (5) of continuing education required.
- G. Responsibility for documenting the acceptability of the program and the verification of the hours claimed rests with the applicant. An applicant shall retain documentation for a period of 5 years after the completion of the program. Such documentation may consist of certificates of attendance, receipt of registration, or signature of facilitator provided the signature is accompanied by a pamphlet, program announcement, or brief summary of the program content. Those records are subject to inspection and verification by the Board upon request.
- H. Continuing education credits for embalmers may be obtained in any of the categories of essential issues to public protection listed above.
- I. The Board may set additional standards for continuing education at its discretion.

### 4.4 COMPLAINTS OF UNPROFESSIONAL CONDUCT

The Board follows Office procedure for receiving, investigating and acting on complaints of unprofessional conduct. Copies of the procedure, complaint forms and more information about the complaint process may be obtained from the

Office.

## **PART 5. PROFESSIONAL STANDARDS**

### **5.1 PROFESSIONAL STANDARDS FOR FUNERAL DIRECTORS**

In addition to any other provisions of law, the following conduct by a licensee violates professional standards and constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action.

1. Allowing an unlicensed person to practice funeral directing except for directly supervised trainees allowed by Rule 3.3;
2. Refusing to surrender custody of a dead human body or cremated remains to a person lawfully entitled to custody;
3. Failing to pay, or cause to be paid, to the Board an amount under Rule 7.2 that is less than required by that rule;
4. Soliciting or accepting a commission, bonus or rebate for disposing a dead human body to any crematory, mausoleum or cemetery;
5. Violating any state law, municipal ordinance or regulation affecting the handling, custody, care, transportation or documentation relating to dead human bodies;
6. Using any funeral merchandise previously used in whole or in part without the knowledge of the individual selecting or paying for the merchandise;
7. Discriminating in services because of race, religion, national origin, age, gender, sexual preference, presence of an infectious disease, or disability;
8. Soliciting business, or offering any inducement, in money or otherwise, for employing solicitors, agents, canvassers or others for the purpose of securing or attempting to secure business, regarding deceased persons or persons whose death is imminent;
9. Using improper methods of seeking business, such as using donations, gifts, bonuses or acts of service designed to place the recipient in a position of obligation or indebtedness, or transfer or offer to transfer any property or service as payment for business secured, influenced or otherwise provided or promised.
10. Soliciting dead human bodies or allowing employees to do so;
11. Transporting bodies in motor vehicles without shades on the sides or a rigid container or cover to prevent public view of the remains;
12. Transporting a dead human body for interment or disposal before obtaining a permit for removal or burial as required by 18 V.S.A. § 5201;
13. Storing dead human bodies anywhere other than in a preparation room or locked room, out of view.
14. If inexpensive caskets are displayed, failing to display the inexpensive caskets in a manner that does not discourage or disparage purchase and that is equivalent to the display of any other caskets on display.
15. Failing to make the consumer aware of, by picture catalogue or display book, in a manner which does not disparage or discourage the purchase of, the three least expensive caskets available from wholesalers doing business with the licensee.
16. Failing to provide consumers, if the establishment sells caskets from a display book or catalogue, an opportunity to review the book or catalogue at home.

### **5.2 PROFESSIONAL STANDARDS FOR EMBALMERS**

In addition to any other provisions of law, the following conduct by a licensee violates professional standards and constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action.

1. Fraudulent or deceptive procurement or use of a license;
2. Practicing the profession when medically or psychologically unfit to do so;
3. Failing to comply with provisions of federal or state statutes, municipal ordinance or regulation

- affecting the handling, custody, care or transportation of dead human bodies;
- 4. Using fraud or misrepresentation as an embalmer;
- 5. Allowing an unlicensed person to practice embalming, except for directly supervised trainees as per 26 V.S.A. § 991 (2);
- 6. Preparing for burial or other disposition of a dead human body, without dignity and respect for the deceased person as well as for the privacy of the family;
- 7. Storing unmarked receptacles containing embalming fluid or any poisonous or dangerous substance;
- 8. Performing embalming, clean-up or disposal of blood and excretions of a dead human body without following the "Universal Precautions for the Prevention of HIV and HBV to Health Care and Public Safety Workers"; and
- 9. Embalming in a case of sudden, accidental, or unexplained death, requiring notice to a medical examiner, before obtaining a release from the medical examiner or state's attorney.

### **5.3 PROFESSIONAL STANDARDS FOR REMOVAL PERSONNEL**

In addition to any other provisions of law, the following conduct by a registrant violates professional standards and constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a registration or other disciplinary action.

- 1. Failing to comply with provisions of federal or state statutes, municipal ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- 2. Performing a removal of a dead human body, without dignity and respect for the deceased person as well as for the privacy of the family;
- 3. Performing removals, clean-up or disposal of blood and excretions of a dead human body without following the "Universal Precautions for the Prevention of HIV and HBV to Health Care and Public Safety Workers";
- 4. Refusing to surrender custody of a dead human body or cremated remains to a person lawfully entitled to custody;
- 5. Transporting bodies in motor vehicles without shades on the sides or a rigid container or cover to prevent public view of the remains;
- 6. Transporting a dead human body for interment or disposal before obtaining a permit for removal or burial as required by 18 V.S.A. § 5201; and
- 7. Storing dead human bodies anywhere other than in a preparation room or locked room, out of view;

### **5.4 INCORPORATION OF FEDERAL TRADE COMMISSION RULES**

The requirements of the Federal Trade Commission (FTC) Rule, entitled "Funeral Industry Practices Revised Rule," in effect on July 19, 1994, are incorporated into these rules by reference. Although all requirements of the FTC are not outlined in these rules, licensed personnel under the Funeral Service statutes and rules are required to follow all FTC rules.

Sections of the general price list and all statements of funeral goods and services shall be numbered and follow the following format, except that statements of funeral goods and services need not contain items 17 and 18 below.

- 1. Basic services of funeral director and staff;
- 2. Embalming;
- 3. Other preparation of the body;
- 4. Additional services and facility fees;
  - a. facilities and staff for viewing or visitation
  - b. facilities and staff for private viewing by the family
  - c. facilities and staff for a memorial service in the funeral home
  - d. facilities and staff for a funeral in the funeral home
  - e. staff for a memorial service in a church or other facility
  - f. staff and equipment for a funeral in a church or other facility



- g. staff and equipment for a graveside service
5. Transfer of remains to funeral home;
6. Automotive equipment;
7. Caskets;
8. Outer burial containers;
9. Urns;
10. Clothing or other merchandise;
11. Forwarding remains to another funeral firm;
12. Receiving remains from another funeral home;
13. Immediate burial;
14. Direct cremation;
15. Body donation to a medical school or facility;
16. A statement that "Our basic service charge includes a \$6.00 fee that will be sent to the State of Vermont and set aside for the protection of funeral service customers;"
17. A statement that funds may be available for final disposition through the Vermont Department of PATH, general assistance program, for persons who qualify; and
18. A disclosure at the bottom of the General Price List with the following wording "The funeral industry is governed by laws defining professional conduct. Consumers who have inquiries or wish to obtain a form to register a complaint may do so by calling 802-828-2367 or by writing the Secretary of State at 109 State Street, Montpelier, Vermont 05609-1106."

A copy of the general price list required by this rule shall be submitted to the Office on request.

## **PART 6. PREPAID FUNERAL ARRANGEMENTS**

### **6.1 PREPAID FUNERAL CONTRACTS; ESCROW ACCOUNTS**

- A. A funeral director who sells a prepaid funeral shall prepare a written contract consistent with 26 V.S.A. §§ 1271-1275 and these rules. The contract may take the form of a trust account, insurance policy or annuity. The following contract elements are required and should be included in the body of the contract or in attachments expressly incorporated in the contract by reference and attached to the contract at the time of execution by the purchaser:
1. disclosure of whether the contract is revocable or irrevocable;
  2. identity of the person expected to be responsible for making funeral arrangements;
  3. all standard provisions required by the Board by rule;
  4. signed and dated statement of goods and services;
  5. itemization of the funeral goods and services to be provided;
  6. a provision describing installment payments (unless payment is in a lump sum at the time of sale), and the provisions if payments are not made as agreed;
  7. the method for the buyer to exercise the right of transfer to another funeral director;
  8. explanation of the funeral director's duty to transfer the contract and assets to another funeral director upon insolvency, bankruptcy, or going out of business;
  9. refund provisions;
  10. the location of the escrow account;
  11. the identity of the escrow agent;
  12. the responsibility for filing tax returns;
  13. disclosure that the purchaser has until midnight of the third day after signing the contract to review and revoke the agreement;
  14. disclosure that if the purchaser has not received notice from the escrow agent that an escrow account has been established within 20 business days, the purchaser may cancel the contract at any time; and
  15. disclosure that in the event goods and services are substituted in a pre-need contract the next of kin or personal representative shall be notified.
- B. If the contract may be revoked, it must carry this language or its equivalent conspicuously:

**This contract may be revoked by you, the buyer. Simply notify [name of funeral director] in writing that you no longer want the prepaid funeral to be provided. The money you have paid, together with all interest or other earnings, will be refunded, less a transaction fee of \$\_\_\_\_\_ (not to exceed 5% of the total).**

Reasonable limits on the right to revoke may be imposed, such as time limits. The limits shall be explained in the contract with the procedure for revocation.

- C. If the contract may not be revoked, it must carry this language or its equivalent conspicuously:

**This contract may not be revoked by you, the buyer. When the funeral director has provided the funeral goods and services which are itemized in this contract, (he or she) is entitled to receive the full amount you have paid, together with all interest or other earnings which have accrued.**

If the contract is subject to cancellation for a specific time period (for example, a three day cancellation period under 9 VSA § 2454), the language above must be modified to make clear that the contract may be revoked until the end of the period, and not thereafter.

- D. When the prepaid funeral arrangements are complete, the trustee will give a copy of the prepaid funeral contract and general price lists to the buyer or the buyer's personal representative.

## **6.2 ESCROW ACCOUNTS; APPOINTMENT OF ESCROW AGENTS**

- A. A funeral director shall establish an escrow account and appoint an escrow agent for each prepaid funeral, or a single escrow agent for a pooled account. The account shall be one customarily maintained in a federally insured depository, insurance company or trust company chartered by the State of Vermont. The depository or company shall have proper authority to do business in Vermont. Notwithstanding any other provision of this rule, an insurance policy for funeral expenses only with an insurance company licensed to do business in Vermont may be considered an escrow account if it is established by the person contracting for the prepaid funeral and names the funeral director as beneficiary.
- B. Escrow accounts shall be established within ten business days of receipt of the first payment on each prepaid funeral. Each subsequent payment shall be deposited in the account within ten business days of receipt.
- C. An escrow account shall be one of the following: a time deposit, demand deposit, or certificate of deposit; bonds of the United States, its agencies, the State of Vermont, its agencies or municipalities, or bonds in which savings banks chartered by the State of Vermont may invest.

## **6.3 ESCROW AGENTS; QUALIFICATIONS**

A person, other than a federally insured depository, licensed insurance company or licensed attorney, shall apply for Board approval before serving as an escrow agent. Any person, including a local elected official, next of kin or the executor of a buyer's estate, may apply by demonstrating (1) independence from the funeral director selling the prepaid funeral or funerals involved, (2) absence of financial interest in the funeral industry, and (3) absence of conviction for any felony or any misdemeanor involving dishonesty or theft. When approved, the agent shall file a bond in an amount greater than the amount to be held in the escrow account, including interest or other earnings.

## **6.4 DUTIES OF ESCROW AGENTS**

- A. The escrow agent shall maintain the funds intact in the escrow account, as instructed by the trustee. The agent shall pay the funds as follows:
1. to the contracting funeral director upon presentation of a death certificate and affidavit that the contract has been performed, and a copy of the affidavit has been provided to the next of kin,

- as provided by 26 VSA § 1275(a); or
2. to the next of kin or designee upon presentation of (a) a death certificate and affidavit from the funeral director who provided the funeral that the funeral has been performed or (b) a death certificate and an affidavit of the next of kin or personal representative stating that the initial contracting funeral director had failed to perform the contract promptly, and that a copy has been provided to the contracting funeral director. When the escrow agent pays the funds under this provision, the agent shall notify the initial contracting funeral director and next of kin or designee;

- B. The escrow agent may also transfer the funds to another allowable escrow account upon request of the trustee or may pay allowable costs when directed and certified by the trustee that the costs are allowable under Rules 6.5(C) and (D).
- C. When a contract is revoked according to its terms, the escrow agent shall pay the money and transaction fee provided in the contract to the funeral provider, and shall pay the balance in the account to the purchaser.

## **6.5 DUTIES OF TRUSTEES**

- A. Unless the prepaid funeral contract specifically provides otherwise, the funeral director shall be the trustee of the account. The contract may provide that the buyer is the trustee or co-trustee of the account, and responsible for filing and paying tax returns. Only the funeral director, the buyer, or a trust company may be a trustee of the account.
- B. The trustee shall give a copy of the prepaid funeral contract to the escrow agent.
- C. The trustee shall obtain a taxpayer identification number for the trust, shall prepare and file income tax returns, and shall pay all reasonable bank fees and administrative costs charged against the account. Administrative costs may not exceed the lesser of two percent of the account, or one-half of the earnings for the previous year.
- D. The trustee may transfer funds from one allowable escrow account to another, when prudent and necessary to protect the funds, by notifying the escrow agent to make the transfer. The trustee may also change escrow agents. The trustee shall notify the buyer of each change of escrow account and escrow agent.
- E. The trustee shall instruct the escrow agent to provide the buyer in writing within 10 business days after the establishment of the escrow account the following:
  1. location of escrow account
  2. amount of deposit
  3. type of escrow account established
- F. The contract may be revoked and no administrative fees shall be charged to the buyer if the information is not provided within 20 business days from the day of purchase.
- G. For revocable trusts, the trustee or escrow agent shall provide annually to the buyer or his or her personal representative, in writing, the following information concerning all escrow accounts:
  1. original deposit
  2. ending balance for the year
  3. interest for the year
  4. debits and credits charged to account for the year
- H. For irrevocable trusts, the trustee or escrow agent shall provide, upon request of the buyer or his or her personal representative, in writing, the following information concerning all escrow accounts:
  1. original deposit
  2. ending balance for the year
  3. interest for the year
  4. debits and credits charged to account for the year

## **6.6 INSURANCE CONTRACTS; ANNUITIES**

Licensed funeral directors may sell insurance policies or annuities to fund prepaid funeral services, provided the funeral director complies with all state and federal regulations regarding insurance as set forth by the Commissioner of the Department of Banking, Insurance Securities and Health Care Administration.

## **6.7 RECORDS**

- A. A funeral director shall maintain the following records relating to each sale of a prepaid funeral:
  - 1. a copy of all contracts;
  - 2. a record of all payments received, and charges made against the account;
  - 3. a copy of the death certificate and affidavit of performance, and, if applicable, the affidavit of the next of kin or personal representative;
  - 4. a copy of each tax return filed by the funeral director, and
  - 5. copies of all correspondence to the buyer or the buyer's designee regarding the status of the escrow account.
- B. These records shall be retained for seven years following termination or performance of the contract, and shall be available for inspection and copying, during normal business hours, at the Board's request. The funeral director may delegate the performance of duties and maintenance of records to agents but remains responsible for compliance with these rules.

## **PART 7. PROTECTION FOR CONSUMERS OF PREPAID FUNERAL ARRANGEMENTS; THE FUNERAL SERVICES TRUST ACCOUNT**

### **7.1 FUNERAL SERVICES TRUST ACCOUNT**

- A. The Funeral Services Trust Account (FSTA) has been established by the General Assembly for the purpose of protecting purchasers of prepaid funeral arrangements from default in the performance of contractual obligations by a funeral establishment. The FSTA shall be administered by the Secretary of State. The Board will work with the Secretary of State to implement administration of the FSTA.
- B. Funds in the FSTA shall be available to persons qualifying under Rule 7.3 to defray costs of funeral services in the event of default upon a contract for a prepaid funeral arrangement.

### **7.2 ASSESSMENTS FOR THE FUNERAL SERVICES TRUST ACCOUNT**

- A. Each licensed funeral establishment shall pay to the FSTA an assessment of \$6 per burial or other disposition. The Board will assess each establishment each year for that establishment's annual obligation to the FSTA.
- B. Establishments shall pay their FSTA assessment within 15 days from the close of the assessment period. Each FSTA assessment check shall be made payable to the Secretary of State, State of Vermont, and shall bear on its face the reference notation "For Deposit in the Funeral Services Trust Account." Assessment periods shall end on the last day of December of each year.
- C. An establishment shall disclose the per disposition assessment on the general price list.
- D. The initial, special assessment shall be due on July 1, 1997. Each establishment shall remit to the Board the assessment set forth in 26 V.S.A. § 1272(9)(a), reproduced in the table below. Thereafter, the rate per disposition shall be \$6, until changed by statute. Determination of the appropriate amount shall be based on the number of dispositions each establishment conducted during the preceding calendar year.
  - 1. Establishments performing fewer than 51 dispositions are assessed an FSTA special assessment of \$150.
  - 2. Establishments performing between 51 and 150 dispositions are assessed an FSTA special assessment of \$250.

3. Establishments performing between 151 and 350 dispositions are assessed an FSTA special assessment of \$500.
  4. Establishments performing over 350 dispositions are assessed an FSTA special assessment of \$750.
- E. When the FSTA balance at the beginning of a fiscal year is at least \$200,000, principal and interest, no disposition charges will be assessed to funeral establishments during that fiscal year.
- F. Dispositions paid for by the Vermont Department of Social Welfare are excluded from the provisions of this rule.
- G. In the event more than one establishment is involved with a single disposition, the establishment filing for the burial transit permit is responsible for the assessment for that disposition. In the event that more than one establishment is involved with a single disposition and one of the establishments is not located in Vermont, the establishment that is located in Vermont is responsible for the assessment for that disposition.

### **7.3 CONSUMER CLAIMS ON THE FUNERAL SERVICES TRUST ACCOUNT**

- A. In the event a funeral establishment is insolvent, bankrupt, or has ceased to do business, and is therefore incapable of performing the prepaid funeral contract into which it has entered, or will therefore be incapable of performing its prepaid funeral contracts at the time of need, holders of prepaid funeral contracts are eligible for payment from the FSTA if the following steps are completed:
1. The consumer files a copy of the original prepaid funeral contract with the Board.
  2. The Board then determines the value of the contract. The value of the contract shall consist of the total of the payments made on the contract by the consumer, plus interest accrued on those payments. The value determined by the Board shall not serve to enhance the contract purchased by the consumer.
  3. Within six months of the date the Board receives notice from the consumer, the Board will provide the consumer a determination of the value of the contract and information about goods and services previously purchased and will provide guidance to the consumer for purchasing a new funeral contract for equivalent goods and services with a funeral establishment of the consumer's choice.
  4. The new funeral service contract is filed with the Board within 10 business days of its creation by the consumer or his or her personal representative.
  5. The Board will review and accept or decline to accept the new arrangement according to the value of the contract and information on record about previously-contracted goods and services.
  6. At the time of need, the Board will pay for the newly contracted and Board-approved pre-need funeral from the FSTA.
- B. The Board may make exceptions to the requirements of Rule 7.3(A) on a case-by-case basis. Exceptions will be granted if the Board finds the requirements of Rule 7.3(A) either present an undue hardship, or are substantially impossible to meet, such as in the case of an otherwise eligible consumer who never received the notice explaining the requirements or whose prepaid funeral contract was the subject of default at the time it became at-need.
- C. A consumer who has purchased a prepaid funeral arrangement is not eligible for payment from the FSTA if the funeral establishment ceases to do business for any reason but the consumer is able to recover all of his or her funds, including principal and interest, in the prepaid funeral arrangement escrow account.

### **7.4 LIABILITY OF DEFAULTING FUNERAL ESTABLISHMENTS**

The owner of a funeral establishment is liable to the State of Vermont for all funds paid out of the FSTA as a result of prepaid funeral contracts upon which the funeral establishment defaulted.

### **7.5 TERMINATION OF THE FUNERAL SERVICES TRUST ACCOUNT**

In the event the General Assembly determines the FSTA is no longer needed for the purposes stated in Rule 7.1(A), funds in the account shall be dedicated to a use benefitting holders of contracts for prepaid funeral

arrangements.

Effective Date: August 15, 2003

**AFFIDAVIT**

**PERFORMANCE OF PREPAID FUNERAL CONTRACT**

I, \_\_\_\_\_ have provided the funeral goods  
(name of funeral director)

and services called for in a prepaid funeral contract dated \_\_\_\_\_ between  
...  
...  
(date of contract)

\_\_\_\_\_ and \_\_\_\_\_ (name of funeral  
establishment) (name of buyer)

My performance of the contract began on \_\_\_\_\_ and will be complete on  
...  
(date)

\_\_\_\_\_. I request payment according to the contract from the escrow agent  
(date)

appointed in the contract.

...  
.....  
...  
(name of funeral director)

...  
.....  
...

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ .

\_\_\_\_\_  
Notary Public

**Appendix A**

**AFFIDAVIT**

**NONPERFORMANCE OF PREPAID FUNERAL CONTRACT**

I, \_\_\_\_\_ request payment of the funds held in escrow for the (next of kin)or(personal representative)

funeral of \_\_\_\_\_ by \_\_\_\_\_  
(person to be provided funeral)  
(funeral director who agreed to provide funeral)

\_\_\_\_\_ failed to provide the funeral promptly, as agreed, (funeral director who agreed to provide the funeral)

and a funeral was instead provided by \_\_\_\_\_.

\_\_\_\_\_ . . .  
\_\_\_\_\_ (funeral director who actually provided the funeral) . . . . .

I have provided a copy of this affidavit to \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(funeral director who agreed to provide funeral)

. . .  
\_\_\_\_\_  
. . .  
(Next of kin or personal representative)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ .

\_\_\_\_\_  
Notary Public

**Appendix B**

**THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED SEPTEMBER 16, 2003**

**16 CFR**

**Commercial Practices**



**CHAPTER I**  
**FEDERAL TRADE COMMISSION**

**SUBCHAPTER D -- TRADE REGULATION RULES**

**PART 453 -- FUNERAL INDUSTRY PRACTICES**

**Sec.**

- 453.1 Definitions.
- 453.2 Price disclosures.
- 453.3 Misrepresentations.
- 453.4 Required purchase of funeral goods or funeral services.
- 453.5 Services provided without prior approval.
- 453.6 Retention of documents.
- 453.7 Comprehension of disclosures.
- 453.8 Declaration of intent.
- 453.9 State exemptions.

**Authority:** 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

**Source:** 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

**§§453.1 Definitions.**

- (a) *Alternative container.* An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.
- (b) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.
- (c) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.
- (d) *Commission.* "Commission" refers to the Federal Trade Commission.
- (e) *Cremation.* "Cremation" is a heating process which incinerates human remains.
- (f) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.
- (g) *Direct cremation.* A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.
- (h) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.
- (i) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.
- (j) *Funeral services.* "Funeral services" are any services which may be used to:

- (1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and
- (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.
- (k) *Immediate burial.* An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.
- (l) *Memorial service.* A "memorial service" is a ceremony commemorating the deceased without the body present.
- (m) *Funeral ceremony.* A "funeral ceremony" is a service commemorating the deceased with the body present.
- (n) *Outer burial container.* An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.
- (o) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.
- (p) *Services of funeral director and staff.* The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in §§453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

#### **§§453.2 Price disclosures.**

- (a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.
- (b) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§453.4(b)(1), funeral providers must:
  - (1) *Telephone price disclosure.* Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.
  - (2) *Casket price list.* (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.
  - (ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."
  - (3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or

charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) The prices of funeral goods or funeral services;
- (2) The overall type of funeral service or disposition; or
- (3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §§453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

- (1) The name, address, and telephone number of the funeral provider's place of business;
- (2) A caption describing the list as a "general price list"; and
- (3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

- (A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;
- (B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;
- (C) The price range for the direct cremations offered by the funeral provider, together with:
  - (1) A separate price for a direct cremation where the purchaser provides the container;
  - (2) Separate prices for each direct cremation offered including an alternative container; and
  - (3) A description of the services and container (where applicable), included in each price;
- (D) The price range for the immediate burials offered by the funeral provider, together with:
  - (1) A separate price for an immediate burial where the purchaser provides the casket;
  - (2) Separate prices for each immediate burial offered including a casket or alternative container; and
  - (3) A description of the services and container (where applicable) included in that price;
- (E) Transfer of remains to funeral home;

- (F) Embalming;
- (G) Other preparation of the body;
- (H) Use of facilities and staff for viewing;
- (I) Use of facilities and staff for funeral ceremony;
- (J) Use of facilities and staff for memorial service;
- (K) Use of equipment and staff for graveside service;
- (L) Hearse; and
- (M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (*specify*).". The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by §§453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

- (A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;
  - (B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and
  - (C) The total cost of the goods and services selected.
- (ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.
- (6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by §§453.2(b)(2), (3), and (4) so long as the statement required by §§453.2(b)(5) is given when required by the rule.

### **§§453.3 Misrepresentations.**

- (a) *Embalming provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
- (i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;
  - (ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.
- (2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§§453.4(b)(1) and 453.5(2), funeral providers must:
- (i) Not represent that a deceased person is required to be embalmed for:
    - (A) Direct cremation;
    - (B) Immediate burial; or
    - (C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and
  - (ii) Place the following disclosure on the general price list, required by §§453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.
- (b) *Casket for cremation provisions --* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
- (i) Represent that state or local law requires a casket for direct cremations;
  - (ii) Represent that a casket is required for direct cremations.
- (2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions -- (1) Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by §§453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by §§453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) *General provisions on legal and cemetery requirements -- (1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§§453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by §§453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions -- (1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by §§453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

#### **§§453.4 Required purchase of funeral goods or funeral services.**

(a) *Casket for cremation provisions -- (1) Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a

casket be purchased for direct cremation.

(2) *Preventive requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services -- (1) Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by §§453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with §§453.3(d)(2).

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by §§453.2(b)(4) (ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by §§453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

#### **§§453.5 Services provided without prior approval.**

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by §§453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not

have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

#### **§§453.6 Retention of documents.**

To prevent the unfair or deceptive acts or practices specified in §§§453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§§453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by §453.2(b)(5), for at least one year from the date of the arrangements conference.

#### **§§453.7 Comprehension of disclosures.**

To prevent the unfair or deceptive acts or practices specified in §§§453.2 through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§§453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

#### **§§453.8 Declaration of intent.**

- (a) Except as otherwise provided in §453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;
- (b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.
- (c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

#### **§§453.9 State exemptions.**

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

- (a) There is a state requirement in effect which applies to any transaction to which this rule applies; and
- (b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.